

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	
v.)	Case No. 08-9001-MC-W-GAF
)	
JOHN M. SOMMERS,)	
)	
Respondent.)	

ORDER DIRECTING RESPONDENT TO COMPLY WITH THE SUMMONS

Pursuant to Section 636, Title 28, United States Code, and Rule 72.1(k), Local Rules of Procedure of the United States District Court for the Western District of Missouri, the Petition to enforce the Internal Revenue Service summons directed to Mark Sumpter was referred to United States Magistrate Judge Robert E. Larsen for processing and handling. The Magistrate Judge has completed the processing and handling of the Petition and has filed his written report consisting of findings of fact, conclusions of law, and recommendations. He recommends that the respondent be ordered to comply with the summons issued by Revenue Agent Mary Y. Hahn on August 12, 2008, with the exception of the materials already in the possession of the Internal Revenue Service,¹ on a date and at a time agreed upon by Revenue Agent Hahn and the respondent, but not later than sixty (60) days after the date of any such Order directing compliance with the summons.

On October 30, 2009, the Magistrate Judge entered an Order in which the respondent was informed that the Court of Appeals in United States v. First National Bank of Mitchell, 691 F.2d

¹The IRS is already in possession of: (1) bank statements and deposit information from Marshall and Ilsley Bank (formerly Gold Bank) for the period December 24, 2004 through December 26, 2006; (2) all bank records relating to the Bank of Onaga Roth IRA for the period January 1, 2005 through December 31, 2005; and (3) the Note, Disclosure and Security Agreement for a loan at Marshall & Ilsley Bank (formerly Gold Bank).

386, 387 n.3 (8th Cir. 1982), held that, in an action to enforce an Internal Revenue Service summons, if the person summoned neither challenges allegations in the complaint nor raises proper affirmative defenses, an evidentiary hearing is not required and the matter can be decided on the written record. The Magistrate Judge's order directed that if the respondent desires to challenge any of the allegations in the petition to enforce or raise proper affirmative defenses, he should do so by filing an answer to the petition setting forth his challenges and/or affirmative defenses by or before November 16, 2009.

In accordance with the requirement of Section 636, Title 28, United States Code, a copy of the report of the Magistrate Judge was served on all parties to this action. No written objections to the Report and Recommendation have been timely filed by the respondent.

The Court has reviewed that record, carefully considered the Magistrate Judge's report, and hereby adopts, after independently determining that they are correct and proper, the findings, conclusions and recommendation of the Magistrate Judge.

In opposing the enforcement of an Internal Revenue Service Summons, a respondent has a heavy burden to disprove actual existence of a valid civil tax determination for a collection purpose by the Internal Revenue Service. United States v. LaSalle National Bank, 437 U.S. 298, 316 (1978); United States v. Norwood, 420 F.3d 888, 893 (8th Cir. 2005). There is nothing in the record in this action which tends to disprove the existence of a valid civil tax purpose for the summons or to establish that there has been a referral to the United States Department of Justice as described in 26 U.S.C. Section 7602(d).

It is, therefore,

ORDERED that the respondent comply with each requirement of the summons issued by

Agent Hahn on August 12, 2008, with the exception of the materials already in the possession of the Internal Revenue Service as set forth in footnote one, supra, on a date and at a time agreed upon by Revenue Agent Hahn and the respondent, but not later than sixty (60) days after the date of this Order. It is further

ORDERED that the Clerk of the Court forthwith serve an attested copy of this Order on all parties. The respondent shall be served at 624 North 8th Street, Buchanan County, St. Joseph, Missouri, 64501.

s/ Gary A. Fenner
Gary A. Fenner, Judge
United States District Court

DATED: June 29, 2010